



ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA-HQ-2016-0268; FRL-9970-75-OECA]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity to Comment Regarding Enel Green Power North America, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has entered into a Consent Agreement with ENEL Green Power North America, Inc. (EGPNA or Respondent) to resolve violations of the Clean Water Act (CWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA, CAA, RCRA and EPCRA portions of the CAFO, pursuant to CWA Sections 309(g)(4)(A) and 311(b)(6)(C), 33 U.S.C. 1319(g)(4)(A) and 33 U.S.C. 1321(b)(6)(C). Upon closure of the public comment period, the CAFO and any public comments will be forwarded to the Agency's Environmental Appeals Board (EAB).

DATES: Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-2016-0268, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>

FOR FURTHER INFORMATION CONTACT: Peter W. Moore, Water Enforcement Division, Office of Civil Enforcement (2243-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; telephone: (202) 564-6014; fax: (202) 564-0010; e-mail: Moore.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

This proposed settlement agreement is the result of voluntary disclosures of CWA, CAA, RCRA and EPCRA violations by EGPNA to the EPA. EGPNA is an electric energy producing company which specializes in producing clean energy from renewable sources (i.e., from hydro, solar, wind, geothermal and biomass sources) in lieu of carbon-based energy sources. EGPNA is incorporated in 1985 in the State of Massachusetts. EGPNA is located at 100 Brickstone Square, Ste 300, Andover, Massachusetts 01810.

On October 12, 2012, the EPA and Respondent entered into a corporate audit agreement pursuant to the Agency's policy on *Incentives for Self-Policing: Discovery, Disclosure,*

Correction and Prevention of Violations (Audit Policy), 65 FR 19,618 (Apr. 11, 2000), in which Respondent agreed to conduct a systematic, documented, and objective review of its compliance with applicable provisions of the CWA, CAA, RCRA and EPCRA. Respondent agreed to submit a final audit report detailing the specific facilities assessed, information setting forth violations discovered, and corrective actions taken. Respondent ultimately audited a total of 77 facilities, as documented in Respondent's November 14, 2012 and final audit report and the March 7, 2013 supplemental audit report.

All violations discovered and disclosed by the Respondent are listed in Attachments A and B to the CAFO.

Proposed Settlement

The EPA determined that Respondent satisfactorily completed its audit and has met all conditions set forth in the Audit Policy for the violations identified in Attachment A of the CAFO. Therefore, 100 percent of the gravity-based penalty calculated for the violations identified in Attachment A of the CAFO is being waived.

Attachment B of the CAFO identifies certain CWA violations that did not meet Condition V of the Audit Policy requiring correction of the violation within 60 days of discovery. For these violations, a gravity-based penalty of \$22,373 is assessed.

For all violations listed in Attachments A and B, EPA calculated an economic benefit of noncompliance of \$54,624. This number was calculated using specific cost information provided by Respondent and use of the Economic Benefit (BEN) computer model.

EGPNA has agreed to pay a total civil penalty of \$76,997 for all the violations identified in Attachments A and B of the CAFO. Of this amount, \$54,624 is the economic benefit of noncompliance and \$22,373 is the gravity-based penalty for the violations listed in Attachment B

of the CAFO.

Of this total amount, \$633 is attributable to the CAA violations, \$49,817 is attributable to the CWA NPDES violations, \$23,946 is attributable to the CWA SPCC violations, \$907 is attributable to the RCRA violations, and \$1,664 is attributable to the EPCRA violations.

The EPA and Respondent negotiated the Consent Agreement in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, specifically 40 CFR 22.13(b) and 22.18(b) (*In re: ENEL Green Power North America, Inc.*; enforcement settlement identifier numbers CWA-HQ-2015-8003, RCRA-HQ-2015-8003, CAA-HQ-2015-8003 and EPCRA-HQ-2015-8003). This Consent Agreement is subject to public notice and comment under Section 311(b)(6)(C) of the CWA, 33 U.S.C. 1321(b)(6)(C). The procedures by which the public may comment on a proposed CWA Class II penalty order, or participate in a Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed Final Order is [*insert date 30 days after date of publication in the **Federal Register***]. All comments will be transferred to the EAB for consideration. The EAB's powers and duties are outlined in 40 CFR 22.4(a).

Disclosed and Corrected Violations

CWA

Respondent disclosed that it failed to prepare and implement a Spill Prevention, Control, and Countermeasure (SPCC) Plan in violation of CWA Section 311(j), 33 U.S.C. 1321(j), and the implementing regulations found at 40 CFR part 112, at eighteen (18) facilities located in Idaho, Kansas, Massachusetts, Minnesota, New Hampshire, Nevada, New York, Oklahoma, Texas, Washington, and West Virginia, , identified in Attachment A and listed below.

Bypass, 2371 East 1100, South Hazelton, ID 83335

Hazelton, 2310 East 930, Hazelton, ID 83335

Caney River, 1205 Road 7, Howard, KS 67353

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Lawrence, 9 South Broadway, Lawrence, MA 01840

Minnesota Wind, 112 Center St, Lake Bento, MN 56151

Sweetwater, 340 Plains Road, Claremont NH, 03743

Somersworth, 83 Olde Mill Road, Somersworth, NH 03879

Salt Wells, 6059 Salt Wells Road, Fallon, NV 89406

Stillwater Geo, 4785 Lawrence Lane, Fallon, NV 89406

Stillwater Solar, 4789 Lawrence Lane, Fallon, NV 89406

Wethersfield Wind, 4179 Poplar Tree Road, Gainesville, NY 14066

LaChute Lower, Elk Drive, Ticonderoga, NY 12884

Fenner, 5508 Selinger Road, Cazenovia, NY 13035

Rocky Ridge, 13237 N2240, Hobart, OK 73651

Snyder Wind Farm, 836 Country Road, Hemleigh, TX 79527

Twin Falls, 49032 Southeast 177th Street, North Bend, WA 98045

Gauley, Gauley River Power Partners, Summersville, WVA 26651

Under CWA Section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA Section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$177,500 by the EPA. Class II proceedings under CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), are conducted in accordance with 40 CFR

part 22. As authorized by CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), the EPA has assessed a civil penalty for these violations.

Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), the EPA will not issue an order in this proceeding prior to the close of the public comment period.

Respondent disclosed that it violated CWA Sections 301(a), 33 U.S.C. 1311(a) and Section 402(a), 33 U.S.C. 1342(a) and implementing regulations found at 40 CFR part 122 at twenty-six (26) facilities located in Georgia, Idaho, Massachusetts, New Hampshire, New York, North Carolina, South Carolina, Vermont, Virginia, and identified in Attachments A and B and listed below.

Milstead, Main Street, Conyers, GA 30207

Barber Dam, 5456 Warm Springs Ave, Boise ID 8371

Hazelton, 2310 East 930, Hazelton, ID 83335

Bypass, 2371 East 1100 South Hazelton, ID 83335

Dietrich Drop, 5 mi S of Dietrich on Milner, Dietrich Drop, ID 83324

Elk Creek, 176 Elk Lake Road. New Meadows, ID 83655

GeoBon – Notch Butte, 120 West Road, Shoshone, ID 83352

Crescent, 1191 Huntington Road, Russell, MA 01702

Glendale, Route 184, Stockbridge, MA 01263

Low Line Rapids, 5 mi S, 1 mi W of Kimberly, Kimberly, ID 83343

Rock Creek, Canyon Springs Road 2.3mi W, 1.2S, Twin Falls, ID 83304

Lower Valley, 131 Sullivan Street, Claremont, NH 03744

Sweetwater, 341 Plains Road, Claremont, NH 03744

Rollinsford, 2 1/2 Front Street, Rollinsford, NH 03786

Mascoma, Route 12A, West Lebanon, NH 03785

Woodsville, 4 North Court Street, Woodsville, NH 03786

EHC, 1965 Maple Street, West Hopkinton, NH 03229

Somersworth, 83 Olde Mill Road, Somersworth, NH 03879

Groveville, Route 52, Beacon, NY 12508

High Shoals, River Street, High Shoals, NC 2808

Piedmont, Highway 86, Piedmont, SC 29673

Ware Shoals, Powerhouse Road, Ware Shoals, SC 26962

Sheldon Springs, 122 Heather Lane, Sheldon Springs, VT 05486

Ottauquechee, 47 Mill Street, N. Hartland, VT 05053

Barnet, Route 7, Barnet VT 05083

Fries, Highway 95, Fries, VA 24331

Under CWA Section 309(a) and (g)(2)(B), 33 U.S.C. 1319(a) and (g)(2)(B), any person who is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this title in a permit issued by a State under an approved permit program under section 402 or 404 of this title may be assessed an administrative penalty of up to \$177,500 by the EPA. Class II proceedings under CWA Section 309(g)(2)(B), 33 U.S.C. 1319(g)(2)(B), are conducted in accordance with 40 CFR part 22. As authorized by CWA Section 309(g)(2)(B), 33 U.S.C. 1319(g)(2)(B), the EPA has assessed a civil penalty for these violations.

CAA

Respondent disclosed that it violated CAA Section 110, 42 U.S.C. 7410 and Nevada State Implementation Plan for operating under a Class II Air Quality Operating Permit that

imposes emission limits, monitoring, testing, and reporting requirements for failing to maintain records or report significant losses of isobutane during routine maintenance. The facilities are located in the State of Nevada.

Under CAA Section 113(d), 42 U.S.C. 7413(d), the Administrator may issue an administrative penalty order to any person who has violated or is in violation of any applicable requirement or prohibition of the CAA, including any rule, order, waiver, permit, or plan. Proceedings under CAA Section 113(d), 42 U.S.C. 7413(d), are conducted in accordance with 40 CFR Part 22. The EPA, as authorized by the CAA, has assessed a civil penalty for these violations.

RCRA

Respondent disclosed that it failed to comply with RCRA Section 3002 of RCRA, 42 U.S.C. 6922, and the regulations found at 40 C.F.R. Part 265, 273, and 279, at sixty (60)) facilities listed in Attachment A of the CAFO when it failed to conduct waste accumulation and storage inspections; maintain proper universal waste disposal and handling practices for spent fluorescent lamps and tubes; and by failing to maintain waste oil in accordance with the regulations. These sixty (60) facilities are located in the following states: California, Connecticut, Georgia, Idaho, Kansas, Maine, Massachusetts, Minnesota, Oklahoma, Nevada, New York, North Carolina, Pennsylvania, South Carolina Vermont, Virginia and Washington, West Virginia,

Under RCRA Section 3008, 42 U.S.C. 6928, the Administrator may issue an order assessing a civil penalty for any past or current violation the RCRA. Proceedings under RCRA Section 3008, 42 U.S.C. 6928, are conducted in accordance with 40 CFR part 22. The EPA, as authorized by the RCRA, has assessed a civil penalty for these violations.

EPCRA

Respondent disclosed that it violated EPCRA Section 302(c), 42 U.S.C. 11002(c), and the implementing regulations found at 40 CFR Part 355, at three (3) facilities listed in Attachment A when it failed to notify the State Emergency Response Commission (SERC) and/or the Local Emergency Planning Committee (LEPC) that these facilities are subject to the requirements of Section 302(c) of EPCRA. These three (3) facilities are located in the following states: Kansas and New Hampshire.

Respondent disclosed that it violated EPCRA Section 311(a), 42 U.S.C. 11021(a), and the implementing regulations found at 40 CFR Part 370, at three (3) facilities listed in Attachment A when it failed to submit a Material Safety Data Sheet (MSDS) for a hazardous chemical(s) and/or extremely hazardous substance(s) or, in the alternative, a list of such chemicals, to the LEPCs, SERCs, and the fire departments with jurisdiction over these facilities. These three (3) facilities are located in the following states: Kansas and New Hampshire.

Respondent disclosed that it violated EPCRA Section 312(a), 42 U.S.C. 11022(a), and the implementing regulations found at 40 CFR part 370, at three (3) facilities listed in Attachment A when it failed to prepare and submit emergency and chemical inventory forms to the LEPCs, SERCs, and the fire departments with jurisdiction over these facilities. These three (3) facilities are located in the following states: Kansas and New Hampshire.

Under EPCRA Section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right-to-know requirements, or any other requirement of EPCRA. Proceedings under EPCRA Section 325, 42 U.S.C. 11045, are conducted in accordance with 40 CFR Part 22. The

EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

List of Subjects

Environmental protection

Dated: October 27, 2017.

Rosemarie Kelley,
Acting Director,
Office of Civil Enforcement,
Office of Enforcement and Compliance Assurance.

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